

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Review of the Policy Implications )  
of the Changing Video Marketplace )

MM Docket No. 91-221

RECEIVED

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

OCT 30 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Today the National Association of Broadcasters ("NAB")<sup>1/</sup> filed its Comments in response to the Commission's Further Notice of Proposed Rule Making in MM Docket No. 91-140.<sup>2/</sup> In these Comments, NAB addressed the Commission's request for guidance on allowing additional, nationwide group ownership of broadcast stations where the group owner has established and successfully implemented an "incubator program" designed to provide management, financial or technical assistance, and/or various forms of training, to minorities or small businesses.

In the Further Notice, the Commission recommends that parties, wishing to express their views on such "incubator program" concepts relating to media ownership beyond radio, submit such comments in the Commission's above-captioned "video marketplace" rulemaking proceeding.<sup>3/</sup> As such, NAB provides, as an attachment to this brief pleading, a copy of the Comments we

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<sup>1/</sup>NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and all the major broadcast networks.

<sup>2/</sup>See Memorandum Opinion and Order and Further Notice of Proposed Rule Making in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992).

<sup>3/</sup>See Notice of Proposed Rule Making in MM Docket No. 91-221, 7 FCC Rcd 4111 (1992).

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have submitted today responding to the radio ownership Further Notice. The statements and conclusions expressed in these attached Comments constitute NAB's views on the establishment of an incubator program policy for either radio or television station ownership.


Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS  
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October 30, 1992

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re	)	
	)	MM Docket No. 91-140
Revision of	)	
Radio Rules and Policies	)	

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

At the outset, the National Association of Broadcasters ("NAB")<sup>1/</sup> applauds the Commission's adoption of its reconsideration decision<sup>2/</sup> in the above-captioned proceeding.<sup>3/</sup> In this action, the Commission modified the rules adopted earlier this year in its Report and Order.<sup>4/</sup> The revised rules provide substantial relief for broadcasters, while satisfying the expressed concerns of broadcasters and other parties over the initial package of rule changes adopted in the Report and

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<sup>1/</sup>NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and all the major broadcast networks.

<sup>2/</sup>See Memorandum Opinion and Order and Further Notice of Proposed Rule Making in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992).

<sup>3/</sup>Today NAB is filing a copy of these comments in the Commission's pending proceeding in MM Docket No. 91-221, exploring modifications to the Commission's television station ownership rules.

<sup>4/</sup>See Report and Order in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992).

Order.<sup>5/</sup> Currently, broadcast station owners are beginning to take advantage of these rule changes -- rule changes going not only to combined station ownership, but also allowing stations to enjoy non-ownership joint ventures and other economies of scale.

Related to the matters to be addressed by NAB herein, the Memorandum Opinion and Order portion of the Commission's August 5, 1992, action restored a provision -- in the national ownership rule<sup>6/</sup> -- aimed at providing an incentive for group owners to invest in minority-controlled broadcast facilities.<sup>7/</sup> However, in restoring this incentive<sup>8/</sup> the Commission expanded the scope of the incentive to allow a broadcast group owner to own up to an additional three AM and three FM stations where control of these additional facilities was held by either minorities or small businesses.<sup>9/</sup>

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<sup>5/</sup>See, e.g. NAB Petition for Partial Reconsideration and Clarification in MM Docket No. 91-140, filed May 29, 1992.

<sup>6/</sup>47 C.F.R. §73.3555(e).

<sup>7/</sup>See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, supra note 2, ¶¶ 13-19.

<sup>8/</sup>In the Report and Order, supra note 4, the Commission had chosen not to continue the kind of minority incentive which had allowed ownership of up to an additional 2 AM stations and 2 FM stations, above the prior 12-12 national radio ownership limit, where the additional stations were minority controlled. See Memorandum Opinion and Order in Gen. Docket No. 83-1009, 100 FCC 2d 74, 94-5 (1985).

<sup>9/</sup>The Commission has defined small businesses as entities with annual revenues of less than \$500,000 and total assets of less than \$1 million.

In its Further Notice of Proposed Rule Making,<sup>10/</sup> the Commission explores yet additional means for stimulating an increase in minority ownership as well as the entry of "small businesses." By way of its Further Notice, the FCC is seeking comment on allowing group owners to exceed the national ownership limits, by a "to-be-determined" number of stations, if they establish and successfully implement a broadcast ownership "incubator program" designed to provide management, financial or technical assistance and/or various forms of training to minorities or small businesses.<sup>11/</sup> A group owner would be permitted to acquire an attributable interest (including a controlling interest) in stations above the otherwise applicable ownership limit upon a prior demonstration that it has in place a minority or small business investment incentives program involving a "meaningful and ongoing commitment to increase pluralism in radio station ownership and stimulating investment in the radio industry."<sup>12/</sup>

Comments are sought on the number of stations above the regular limit that might be obtainable through this process and on the following types of programs in which group owners could participate to aid minorities or small businesses:

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<sup>10/</sup>The Commission combined, into a single document, the Reconsideration Memorandum Opinion and Order and the pending Further Notice of Proposed Rule Making.

<sup>11/</sup>See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, supra note 2, ¶ 26.

<sup>12/</sup>Id. at ¶ 22.

(a) management or technical assistance; (b) loan guarantees; (c) direct financial assistance through loans or equity investment; (d) training programs; and (e) business planning assistance. Comments on other kinds of assistance programs are requested as well.<sup>13/</sup> Also, the FCC has solicited comments on whether a group owner could obtain additional national ownership opportunities if it were to enter into a joint venture with an established Small Business or Minority Enterprise Small Business Investment Company (SBIC or MESBIC).<sup>14/</sup> The Commission says its relatively new Small Business Advisory Committee will be addressing these issues as well.

NAB has long supported the concept of increasing minority ownership in American broadcasting. For example, NAB was one of the prime-movers in the efforts to persuade the Commission to adopt its existing "minority tax certificate" policy<sup>15/</sup> and its "distress sales" policy.<sup>16/</sup> More recently, NAB has urged the Commission to expand both the distress sales

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<sup>13/</sup>Id. at ¶ 26.

<sup>14/</sup>See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, supra note 2, ¶ 24. Also, and as the Commission is well aware, NAB was the principal creator of Broadcap, a MESBIC involved in making loans to minority entrepreneurs in communications.

<sup>15/</sup>See, e.g., Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC 2d 979 (1978).

<sup>16/</sup>Id. See also Clarification of Distress Sale Policy, 44 RR 2d (P & F) 479 (1978).

and minority tax certificate policies in the context of FM station licensing.<sup>17/</sup>

It is NAB's view that the concepts advanced in the Further Notice of Proposed Rulemaking are worth pursuing as one means of expanding minority ownership. Moreover, their adoption would not be inconsistent with the continuing congressional restrictions<sup>18/</sup> on FCC actions which might diminish the Commission's minority ownership rules and incentives.

NAB recognizes that the Commission's "incubator" plan would also encompass efforts to support the entry of small businesses into radio and television broadcasting.<sup>19/</sup> We also acknowledge the potential merit of advancing embryonic, small businesses, in that this potentially could add to the diversity of broadcast voices. But at the same time, we do not believe that the Commission's interest in stimulating small business

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<sup>17/</sup>See NAB Petition for Rule Making (RM 7932), filed February 10, 1992. In this Petition, NAB asked for a thorough review of existing FM station allocation and licensing policy, including a request that the Commission expand those policies currently aimed at increasing minority ownership in American radio broadcasting.

<sup>18/</sup>See, e.g., Pub. L. 102-140, which provides that no funds appropriated by the FCC "shall be used to retroactively apply changes in, or to continue a reexamination of, the policies of the policies of the Federal Communications Commission with respect to comparative licensing, distress sale and tax certificates granted ... to expand minority and women ownership of broadcast licenses ... which were effective prior to September 12, 1986." 105 Stat. 782, 797 (1991).

<sup>19/</sup>See FCC Public Notice, October 6, 1992, encouraging interested parties to file comments in response to the Commission's proposed "incubator" program for radio and television broadcasters. See also Memorandum Opinion and Order, supra note 2, n.29.

entry into broadcasting should cloud its focus on expanding genuine minority ownership in broadcasting.<sup>20/</sup>

At this stage, and recognizing that the issues involved here are complex and worthy of further in-depth discussion and deliberation, NAB urges the Commission to devote its energies in this proceeding to developing a set of policies that will provide real and meaningful benefits to minority entrepreneurs. To the extent that small business might be included in such a program, NAB expects that the Commission's newly-constituted Small Business Advisory Committee<sup>21/</sup> will be employed to give an initial assessment of how such benefits might inure to small businesses, without compromising the widespread interest in fostering increased minority ownership in broadcasting.

#### CONCLUSION

NAB believes that the rules adopted in the Commission's reconsideration action in this proceeding will advance the

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<sup>20/</sup>NAB notes that several petitioners for reconsideration of the Commission's Memorandum Opinion and Order, supra note 2, currently are raising similar concerns regarding the addition of a "small business" element to the newly adopted "national ownership" provision allowing up to three additional stations per service where the facilities are minority controlled or controlled by small business.

<sup>21/</sup>NAB was disappointed that only two broadcasters were included within the membership list of the FCC Small Business Advisory Committee. In a letter being sent today to FCC Chairman Alfred C. Sikes, NAB strongly recommends that the FCC expand that membership roster to include many more representatives of the broadcasting industry -- an industry which holds the greatest promise for providing universal, free, diverse programming to minority and non-minority audiences.



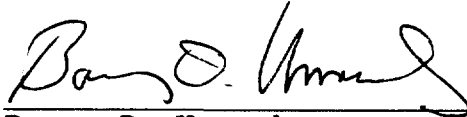
interests of both broadcasters and the listening public. Concerning the new proposals now being explored here, NAB maintains that the Commission should continue to assess methods by which the concepts of minority ownership and group owner efficiencies can be advanced. Also, and regarding minority ownership, NAB renews its call, discussed above and in several recent NAB pleadings, for the Commission to expand its existing minority tax certificate and distress sales policies.

Respectfully submitted,

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October 30, 1992

CERTIFICATE OF SERVICE

I, Judith L. Gerber, do hereby certify that a true and correct copy of the Comments of the National Association of Broadcasters in MM Docket No. 91-140, was sent, via first class mail, on this date, October 30, 1992, to the following:

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